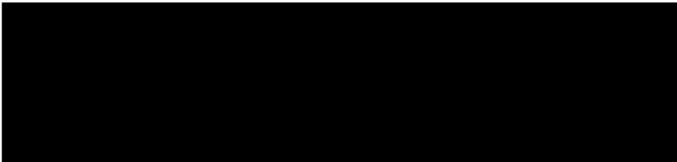




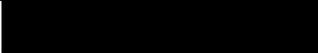
U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



FILE:



SRC 97 165 50885

Office: Texas Service Center

Date: **MAY 22 2007**

IN RE:

Applicant:



APPLICATION:

Application for Adjustment from Temporary to Permanent Resident Status pursuant to Section 245A of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application for adjustment from temporary to permanent resident status was denied by the Director, Southern Service Center. It was twice reopened and denied by the Director, Texas Service Center, and is before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The application was originally denied because it had not been filed in an untimely manner. It was reopened, and then denied because the applicant failed to provide the results of a medical examination, and failed to demonstrate competency in the English language and knowledge of United States history and government. The application was reopened once more, and denied because of the lack of the medical report, proof of identity, and photographs.

The initial denial, based on the untimely filing of the application, was not subject to appeal. On appeal to the second denial, the applicant stated that she never received the notices which advised her as to what to submit. She has not responded to the third denial.

The regulation at 8 C.F.R. § 245a.3(b) states:

Eligibility. Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence if the alien:

- (1) Applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 43 months from the date of actual approval of the temporary resident application.

The applicant was granted temporary resident status on July 20, 1988.¹ The 43-month eligibility period for filing for adjustment expired on February 20, 1992. The Application for Adjustment of Status from Temporary to Permanent Resident (Form I-698) was filed on May 1, 1997, more than five years late. Thus, on May 18, 1999, the application was properly denied on this basis.² Pursuant to section 245A(f) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a(f), no denial of adjustment of status under this section based on a late filing of an application for such adjustment may be reviewed by a court of the United States or of any State or reviewed in any administrative proceeding of the United States Government.

Any alien who has been lawfully admitted for temporary resident status may apply for adjustment of status if the alien (A) can demonstrate that he or she meets the requirements of section 312 of the Immigration and Nationality Act (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States); **or**, (B) can demonstrate he or she is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States. *See* 8 C.F.R. § 245a.3(b)(4).

¹ In the first notice of denial the director stated that the applicant was granted temporary residence on June 17, 1988. However, that is the date on which the interviewing officer recommended that the application be granted. Also, in a notice dated September 30, 1999, the director stated that the applicant was granted temporary residence on November 2, 1989. There is no evidence in the record to support that finding. The correct date of approval, July 20, 1988, is documented on a computer printout in the record.

² Although the director later withdrew the decision and reopened the matter, the original denial of the application was not erroneous.

An applicant may demonstrate that the section 312 requirements have been met by speaking and understanding English during the course of the permanent residence interview, or by passing a standardized section 312 test given in the English language by the Legalization Assistance Board with the Educational Testing Service or the California State Department of Education with the Comprehensive Adult Student Assessment System. *See* 8 C.F.R. § 245a.3(b)(4)(iii).

On her application, the applicant indicated that she would comply with the history, government and English language requirements through examination at the time of interview. In the notice dated September 30, 1999, in which the applicant was advised that the application was reopened, the director notified the applicant of the need for her to contact the director if she would like to be scheduled for an interview. There is no record of a response from the applicant.

It is noted that there is also no evidence that the applicant has passed a standardized section 312 test. Thus, she has not shown that she meets the requirements of section 312 of the Act.

Pursuant to 8 C.F.R. § 245a.1(s), "satisfactorily pursuing" means:

- (1) An applicant for permanent resident status has attended a recognized program for at least 40 hours of a minimum 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English/citizenship course prescribed by the recognized program in which he or she is enrolled (as long as enrollment occurred on or after May 1, 1987, course standards include attainment of particular functional skills related to communicative ability, subject matter knowledge, and English language competency, and attainment of these skills is measured either by successful completion of learning objectives appropriate to the applicant's ability level, or attainment of a determined score on a test or tests, or both of these); or,
- (2) An applicant presents a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and U.S. history and government); or,
- (3) An applicant has attended for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. history and government); or,
- (4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987, and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by the district director or the Director of the Outreach Program under Sec. 245a.3(b)(5)(i)(D) of this chapter; or,
- (5) An applicant attests to having completed at least 40 hours of individual study in English and U.S. history and government and passes the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States. Such test may be given by INS, as well as, State Departments of Education (SDEs) (and their accredited educational

agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by INS.

To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at sec. 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" (Form I - 699) issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at sec. 245a.1(s) (1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under sec. 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under sec. 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under sec. 245a.1(s)(5) of this chapter. 8 C.F.R. § 245a.3(b)(4)(iv).

On July 13, 2005, the director sent the applicant a notice asking her to submit proof that she met the section 312 requirements for English, history and government. The director also advised her that she could also submit any of the above documents. It is not clear that the notice was sent to the applicant's last known address, and on her November 3, 2005 appeal she states that she did not receive it. Subsequently, on November 9, 2005, the director sent a notice to the applicant advising her of the need to submit photos, a medical report, evidence of identity, and documentation showing she meets the English/civics requirements. The applicant did not respond.

The applicant has not submitted Form I-699, Certificate of Satisfactory Pursuit, or a high school or GED diploma, or proof of attendance for one academic year at a state recognized learning institution, or evidence of having passed the IRCA Test for Permanent Residency. As such, the applicant has not demonstrated that she "satisfactorily pursued" a course of study recognized by the Attorney General.

Therefore, the applicant has not shown that she meets the section 312 requirements **or** that she satisfactorily pursued an approved course. As such, she is ineligible for permanent residence within the legalization program on this basis. As stated earlier, she is also ineligible for failure to have filed a timely application.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.